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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1974

No. 73-1653

ROY W. ENSLOW,
Petitioner,

vs.

ARTHUR JEROME WATSON,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

BRIEF OF THE STATE OF CALIFORNIA AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE

The State of California has a direct and substantial interest in this case for two important reasons. First, the order of the Colorado Supreme Court effectively and, it appears, permanently bars this State from securing the return of a fugitive from the justice of the State of California. Second, the Colorado court's ruling has the effect of elevating state law over both the United States Constitution and federal statutes

implementing the pertinent constitutional provisions. If, as contended by petitioner and fully supported by the State of California, the duty of a Governor to render up fugitives upon demand is a basic and absolute constitutional condition of statehood, then no state may enact laws which limit that duty.

The opinion of the Colorado Supreme Court construes a Colorado statute in such a way as to limit the power of the Colorado Governor in extradition matters by holding that the failure of that Governor to fulfill his promise to return the fugitive to California after prosecution vitiates his authority to honor a formal demand by California for the fugitive's return. Authority is an essential ingredient of duty. Thus, the Colorado court has provided that a state may enact a law which limits and, as in this case, may operate to absolve a duty prescribed by the United States Constitution.

It is incumbent upon all states to seek to preserve and protect the integrity of the constitution. The United States consists of semiautonomous states bound together under one constitution which prescribes the various rights and duties of the states in relation to each other. To allow any state to elevate its own law above the Constitution and to so unilaterally absolve itself of a constitutional duty to sister states would be to signal the dissolution of that bond which holds the Union together.

For these reasons, the State of California joins the State of Colorado in urging this Court to vacate

the opinion of the Supreme Court of the State of Colorado and to further provide that no state may limit the duty of its Governor to honor the lawful requisition of the Governor of a sister state for the return of a fugitive from justice.

ARGUMENT

The matter of respondent's extradition is governed by federal law, and Section 5 of the Uniform Criminal Extradition Act cannot be construed to limit the constitutional duty or authority of a governor to honor a demand for extradition submitted by a sister state.

Section 5 of the Uniform Criminal Extradition Act was added in 1936 and provides:

> "When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the Governor of this state may agree with the Executive Authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.
>
> "The Governor of this state may also surrender on demand of the Executive Authority of any other state any person in this state who is charged in the manner provided in Section 23 of this act with having violated the laws of the state whose Executive Authority is making the demand, even though such person left the demanding state involuntarily."

In Colorado, that section is embodied in Colorado Revised Statutes 1963, 60-1-5, which is set forth in Exhibit A attached to the Petition. In California, Section 5 was adopted as Penal Code section 1549, which is set forth in Exhibit 1 attached to this brief. The Uniform Criminal Extradition Act or its equivalent has been adopted by virtually every state.

As Petitioner notes, the Colorado Supreme Court has construed Section 5 of the Uniform Criminal Extradition Act as both a grant and a limitation of the authority of its Governor to honor California's demand for the return of the respondent. In other words, the Court has construed Section 5 as conferring a power upon the Governor which would not otherwise exist, and it is in the grant of that new authority that the court found a limitation on the power conferred.

The Constitution provides that it is the duty of the chief executive of any state to render up a fugitive from the justice of a sister state upon the demand of the chief executive of the State from which he departed. Constitution, Article II, Section 4, Clause 2.[1] Congress has provided enabling legislation in Title 18, United States Code, section 3182,[2] since it has been held that the constitutional provision is not self-executing. *Roberts* v. *Reilly* (1885) 116 U.S. 80; *United States ex rel. Silver* v. *O'Brien* (1943) 138 F.2d 217, *cert. denied* 321 U.S. 766.

[1] Set forth in Exhibit A of the Petition.
[2] Set forth in Exhibit A of the Petition.

It is well established that insofar as the federal law applies, it controls the extradition of fugitives, and while states may allow extradition on terms less exacting than those provided in the federal law, they may not impose higher standards than those required by federal law. *Smith* v. *Idaho* (1967) 373 F.2d 149; *Walden* v. *Mosley* (1970) 312 F.Supp. 855, 859.[3] Since federal law controls only insofar as its scope permits, it is clear that states are free to enact supplementary extradition legislation which contemplates the interstate rendition of persons not otherwise covered by federal law. In such situations, state legislation would truly be both a grant and a limitation of executive authority.

The question presented in the present petition is the source of a Governor's power to render up a prisoner of the demanding state who has been released to the custody of the asylum state for the express and limited purpose of trial in the asylum state. If such a person would not be extraditable under the federal law, then Section 5 of the Uniform Criminal Extradition Act would be an expansion of the extradition law, and the Colorado courts could properly construe the scope of the authority conferred. However, if, as contended by the Petitioner and fully supported by the State of California, such a person is extraditable under federal law, then Section 5 cannot be applied to limit the constitutional duty of a Governor to render up a fugitive from justice.

[3] See also other cases cited by Petitioner at page 6 of the Petition.

Article IV, Section 2, Clause 2, of the United States Constitution provides:

> "A person charged in any State with treason, felony, or other crime, *who shall flee from justice, and be found in another State,* shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime." (Emphasis added.)

The enabling legislation, 18 U.S.C. section 3182, expressly applies "[w]henever the executive authority of any State or Territory demands any person as a *fugitive from justice* . . . ." (Emphasis added.) It is clear that the Constitution and enabling legislation apply only to persons classified as "fugitives from justice."

The Colorado Supreme Court did not expressly determine whether respondent Watson was a fugitive from justice within the meaning of the Constitution. Instead, the Colorado Court merely held that Section 5 of the Uniform Criminal Extradition Act controlled the case.

The people of the State of California contend that respondent Watson is a fugitive from the justice of this State and that his return to California is thus governed by the Constitution and federal law, and not by Section 5 of the Uniform Criminal Extradition Act. As indicated both in the Petition and in the Colorado Supreme Court opinion, respondent Watson was a California inmate at the time he was extradited

to Colorado to stand trial on charges pending in that State. His release to Colorado was conditioned upon a promise by the Governor of Colorado to return him to California following prosecution. That promise on behalf of the State of Colorado was authorized by Section 5 of the Uniform Criminal Extradition Act, enacted by Colorado in Colorado Revised Statutes 1960, 60-1-5.

The definition of the word "fugitive" as used in the Constitution, Article IV, Section 2, and in 18 U.S.C. 3182, has been broadly set by both federal and state courts. In *Appleyard* v. *Massachusetts* (1906) 203 U.S. 222, 227, this court provided:

> ". . . the simple inquiry must be whether the person whose surrender is demanded is in fact a fugitive from justice, not whether he *consciously* fled from justice in order to avoid prosecution for the crime with which he is charged by the demanding State. A person charged by indictment or by affidavit before a magistrate with the commission within a State of a crime covered by its laws, and who, after the date of the commission of such crime leaves the State—no matter for what purpose or with what motive, nor under what belief—becomes, from the time of such leaving, and within the meaning of the Constitution and the laws of the United States, a fugitive from justice, and if found in another State must be delivered up by the Governor of such State to the State whose laws are alleged to have been violated, on the production of such indictment or affidavit, certified as authentic by the Governor of the State

> from which the accused departed. Such is the command of the supreme law of the land, which may not be disregarded by any State. . . ."

This court has never limited that basic definition. See *McNichols* v. *Pease* (1907) 207 U.S. 100, 108; *Drew* v. *Thaw* (1914) 235 U.S. 432, 439; *Innes* v. *Tobin* (1915) 240 U.S. 127, 131; *Biddinger* v. *Commissioner* (1917) 245 U.S. 128, 133; *Hogan* v. *O'Neill* (1920) 255 U.S. 52, 56. In fact, in *Bassing* v. *Cady* (1908) 208 U.S. 386, 392–393, this Court further stated that one is subject to extradition even though he left the state with the knowledge of, or without objection by, the authorities of the demanding state. See *United States ex rel. Tyler* v. *Henderson* (1971) 453 F.2d 790, 793.

From the foregoing, it is apparent that one is a "fugitive from justice" within the meaning of the Constitution and Federal law regarding extradition whenever it appears that he committed a crime while present in the demanding state and that he thereafter left that state. In the present case, respondent Watson was convicted of an offense in the State of California and was serving a sentence therefor at the time of his extradition to Colorado. Under the principles noted above, respondent is clearly a fugitive from Justice[4] unless the fact of his departure from California pursuant to the compulsion of legal process, Colorado's extradition, somehow changes his status.

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[4] See *Fowler* v. *Ross* (1952) 196 F.2d 25, 35 (the underlying charge is not swallowed up by the conviction).

It does not appear that this Court has ever squarely addressed the question of whether voluntary departure from the demanding state is an essential ingredient of fugitivity. See *United States ex rel. Moulthrope* v. *Matus* (1954) 218 F.2d 466, 468. However, other courts have held that the removal of a person from the demanding state under the compulsion of legal process does not affect his status as a fugitive for purposes of extradition, and it appears that this Court has repeatedly declined to review those decisions whenever review was sought. *Brewer* v. *Goff* (1943) 138 F.2d 710, 712; *Spencer* v. *Hamilton* (1926) 12 F.2d 976; *Knott* v. *State* Okl.Cr. 1963, 387 P.2d 142; *Fernbaugh* v. *Hurt,* Okl.Cr. 1960, 354 P.2d 787, *cert. den.* 364 U.S. 873; *Application of Butler* (1959) 346 P.2d 348, *cert. den.* 363 U.S. 846; *Golla* v. *State* (1960) 159 A.2d 585 *cert. den.* 364 U.S. 841; *Commonwealth ex rel. Rushkowski* v. *Burke* (1952) 171 Pa.Super. 1, *cert. den.* 345 U.S. 919; *Ex Parte Martin* (1935) 142 Kan. 907; *People ex rel. McFadden* v. *Meyering* (1934) 358 Ill.442; *State ex rel. Shapiro* v. *Wall* (1932) 187 Minn. 246. Moreover, federal cases have upheld the right of a state to command the return of an inmate removed by federal authorities pursuant to a writ of habeas corpus ad prosequendum. *Derengowski* v. *United States* (1968) 404 F.2d 778, 781–782 *cert. den.* 394 U.S. 1024.

It is reasonable that a person involuntarily removed from the demanding state is nevertheless a fugitive within the meaning of the Constitution. It

is well settled that the purpose of the extradition clause of the Constitution was to serve the prompt and efficient administration of justice by dissolving the boundaries between states. *Appleyard* v. *Massachusetts, supra,* at 227; *Smith* v. *State of Idaho* (1967) 373 F.2d 149, *cert. den.* 388 U.S. 919; *Ex Parte Morgan* (1948) 78 F.Supp.756, affirmed 175 F.2d 404, *cert. den.* 338 U.S. 827. It was to eliminate the de facto immunity from prosecution created when one sovereign grants asylum to a fugitive from the justice of another sovereign. Although his comments did not directly refer to extradition, Mr. Chief Justice Taft's remarks in *Ponzi* v. *Fessenden* (1922) 258 U.S. 254, 260, are appropriate to consideration of the present petition:

> "One accused of crime has a right to a full and fair trial according to the law of the government whose sovereignty he is alleged to have offended, but he has no more than that. He should not be permitted to use the machinery of one sovereignty to obstruct his trial in the courts of the other, unless the necessary operation of such machinery prevents his having a fair trial. He may not complain if one sovereignty waives its strict right to exclusive custody of him for vindication of its laws in order that the other may also subject him to conviction of crime against it. *In re Andrews,* 236 Fed. 300; *United States* v. *Marrin,* 227 Fed. 314. Such a waiver is a matter that addresses itself solely to the discretion of the sovereignty making it and of its representatives with power to grant it.

> "One accused of crime, of course, can not be in two places at the same time. He is entitled to be present at every stage of the trial of himself in each jurisdiction with full opportunity for defense. *Frank* v. *Mangum,* 237 U.S. 309, 341; *Lewis* v. *United States,* 146 U.S. 370. If that is accorded him, he can not complain. The fact that he may have committed two crimes gives him no immunity from prosecution of either."

In the present case, the State of California waived its right to exclusive jurisdiction over the respondent in order that the State of Colorado might try him on serious charges pending in that state. California clearly did not intend to waive its jurisdiction to eventually satisfy its judgment against Mr. Watson, since Mr. Watson was released to the temporary custody of Colorado only after the Colorado Governor gave written assurance that respondent would be returned after trial.[5] See *In re Patterson* (1966) 64 Cal.2d 357, 363, 411 P.2d 897. Mr. Watson should not be allowed to contest his return to California simply because the Governor of Colorado failed to fulfill his promise to the State of California. If his return had been immediately after his Colorado conviction, that return would have been governed by the Executive Agreement and would have been summary in nature. *Boag* v. *Boies* (1972) 455 F.2d 467, 468. The failure of the Governor of Colorado to return him as promised gives the respondent no greater right to exemption from the jurisdiction of Cali-

[5] See Petition, page 5, for the specific language of that promise.

fornia that he would have had otherwise. His unauthorized absence from the State of California renders him a fugitive from the justice of this state, and, as such, extraditable.

Petitioner has noted in its brief that the duty of a Governor to render up fugitives on demand is constitutionally mandated and that no action on the part of the Governor of Colorado could discharge that duty. The State of California fully supports that position. As this Court noted in *Appleyard* v. *Massachusetts*, *supra*, at page 227: "Such is the command of the supreme law of the land, which may not be disregarded by any state." The duty prescribed in the Constitution is a duty to sister states, for it is in the nature of a treaty stipulation between sovereignties. *Id.* While it may be true that no force exists to compel one sovereign state to honor the demand of another (*Kentucky* v. *Dennison* (1860) 65 U.S. 66), it is clear that when a Governor wishes to honor his constitutional duty to a sister state, he has authority to do so. To hold otherwise would be to render the duty meaningless.

It should be noted that the views expressed above serve the best interests of the individual as well as those of the states. It is apparent that one of the greatest contributions of Section 5 of the Uniform Criminal Extradition Act was to provide the machinery by which to extend the speedy trial protection of the Sixth Amendment to individuals incarcer-

ated in another jurisdiction.[6] Comity requires sister states to give full faith and credit to the promises of a Governor under Section 5. Similarly, by according full faith and credit, the state having primary jurisdiction over the prisoner can temporarily give up its exclusive control over him without fear that its efforts to return the prisoner will be frustrated by the demanding state, since the promising Governor has lawfully committed the resources of his state to the return of the prisoner after trial. Unhesitating reliance upon the commitment of the demanding state clearly serves the speedy disposition of charges, a process which benefits both the individual and the people of the charging state. To hold that the failure of the charging state to fulfill its commitment now deprives that state of all authority to honor a demand for the prisoner's return, obviously has a chilling effect on the willingness of the state with primary jurisdiction to relinquish its exclusive control so as to allow a speedy disposition of

[6] The Agreement on Detainers embodies virtually the same promise on the part of the charging state as that contemplated by Section 5 of the Uniform Criminal Extradition Act. The Agreement has been adopted in California as Penal Code Section 1389, set forth in Exhibit 2, and in Colorado as Colorado Revised Statutes Chapter 74, Section 1701 et seq. By its terms, the Agreement on Detainers is designed to "encourage the expeditious and orderly disposition of such charges...." (Article I). Because the Agreement on Detainers covers virtually the same situation as contemplated by Section 5 of the extradition act, and because it contemplates an administrative rather than an executive transfer, states which are party to the Agreement on Detainers do not generally utilize Section 5 of the Uniform Criminal Extradition Act in order to secure temporary custody of a prisoner for purposes of trial.

criminal charges. It is submitted that the desire to afford a speedy trial on criminal charges pending in a sister state is a positive goal for an enlightened society, and that the decision of the Colorado Supreme Court impedes the realization of that goal and is detrimental not only to the relations between states, but to the equally, if not more important rights of the individual as well.

CONCLUSION

For the foregoing reasons, the State of California as amicus curiae on behalf of petitioner herein, respectfully requests this Court to vacate the decision of the Colorado Supreme Court.

Respectfully submitted,

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APPENDIX

EXHIBIT 1
CALIFORNIA PENAL CODE

§1549. [Agreement for return to this state of person imprisoned or held in another: Conditions: Surrender of person who left other state involuntarily]

When it is desired to have returned to this State a person charged in this State with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another State, the Governor of this State may agree with the executive authority of such other State for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other State, upon the condition that such person be returned to such other State at the expense of this State as soon as the prosecution in this State is terminated.

The Governor of this State may also surrender on demand of the executive authority of any other State any person in this State who is charged in the manner provided in section 1548.2 of this code with having violated the laws of the demanding State even though such person left such demanding State involuntarily.

EXHIBIT 2

CALIFORNIA PENAL CODE

Section 1389. The agreement on detainers is hereby enacted into law and entered into by this State with all other jurisdictions legally joining therein in the form substantially as follows:

The Agreement on Detainers

The contracting states solemnly agree that:

Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV hereof.

Article III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have cause to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request

of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which

the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(c) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

Article IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V (a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request: and provided further that there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the pris-

oner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article V

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany

the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or

charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing

for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

Article VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute re-

pealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Section 1389.1. The phrase "appropriate court" as used in this agreement on detainers shall, with reference to the courts of this State, mean the court in which the indictment, information, or complaint is filed.

Section 1389.2. All courts, departments, agencies, officers, and employees of this State and its political subdivisions are hereby directed to enforce the agreement on detainer and to co-operate with one another and with other states in enforcing the agreement and effectuating its purpose.

Section 1389.3. Nothing in this chapter or in the agreement on detainers shall be construed to require

the application of Section 644 to any person on account of any conviction had in a proceeding brought to final disposition by reason of the use of said agreement.

Section 1389.4. Every person who has been imprisoned in a prison or institution in this State and who escapes while in the custody of an officer of this or another state in another state pursuant to the agreement on detainers is deemed to have violated Section 4530 and is punishable as provided therein.

Section 1389.5. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this State to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainer. Such official shall inform such inmate of his rights provided in paragraph (a) of Article IV of the Agreement on Detainers in Section 1389 of this code.

Section 1389.6. The Administrator, Interstate Probation and Parole Compacts, shall administer this agreement.

Section 1389.7. When, pursuant to the Agreement on Detainers, a person in actual confinement under sentence of another jurisdiction is brought before a California court and sentenced by the judge to serve a California sentence concurrently with the sentence of the other jurisdiction, the Adult Authority and the California Women's Board of Terms and Parole, and the panels and members thereof, may meet in such other jurisdiction, or enter into cooperative arrangements with corresponding agencies in the other jurisdiction, as necessary to carry out the term-fixing and parole functions.

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